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Karen B. Possner
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November 20, 1997

EX PARTE OR LATE FILED

By Hand

Ms. Meredith J. Jones, Chief
Cable Services Bureau
Federal Communications Commission
2033 M Street, N.W., Ninth Floor
Washington, D.C. 20554

Re: In re Preemption of Local Zoning Regulation of Satellite
Earth Stations and In re Implementation of Section 207 of
the Telecommunications Act of 1996; Restrictions on
Over-the-Air Reception Devices: Television Broadcast
Service and Multichannel Multipoint Distribution Service,
IB Docket No. 95-59 and CS Docket No. 96-83/11 FCC
Rcd 19276 (1996)
Petition for Reconsideration
Request for Clarification and Expeditious Action

Dear Ms. Jones:

Thank you for the opportunity to meet with you and your staff on November 6th concerning BellSouth Corporation's ("BellSouth") pending Petition for Reconsideration ("Petition") in the above-referenced over-the-air antenna preemption.¹ As we discussed, BellSouth is concerned that recent Commission adjudicatory decisions,² while achieving the

¹ Petitions for reconsideration also were filed by seven other parties, each of which largely espoused the positions advocated by BellSouth. On December 4, 1996 BellSouth filed Reply Comments in this proceeding.

² See *Victor Frankfurt, Vernon Hills, Illinois*, DA 97-2305, released October 31, 1997 ("*Frankfurt*"); *CS Wireless Systems, Inc. d/b/a OmniVision of San Antonio*, DA 97-2187, released October 14, 1997 ("*CS Wireless*"); *Jay Lubliner and Deborah Galvin*, DA 97-2188, released October 14, 1997 ("*Lubliner*"); *Michael J. MacDonald*, DA 97-2189, released October 14, 1997 ("*MacDonald*"); and *Star Lambert and Satellite Broadcasting and Communications Association of America*, DA 97-1554, released July 22, 1997 ("*Star Lambert*"). BellSouth filed Comments in all but the *Frankfurt* proceeding, in each case urging the Commission to act on the *Petition* prior to taking action on individual antenna preemption petitions. There are at least four other petitions for declaratory ruling pending before the FCC. See *Public Notice*, DA 97-2135, released October 3, 1997 (regarding CSR-5115-O); *Public Notice*, DA 97-1015, released May 14, 1997 (regarding CSR-4974-O); *Public Notice*, DA 97-1014, released May 14, 1997 (regarding CSR-5001-O); *Public Notice*, DA 97-1841, released August 28, 1997 (regarding CSR-5074-O).

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correct result, suggest that certain safety-based restrictions could be sustained if they are merely "clearly defined," regardless of whether such restrictions are designed to advance a "compelling" safety objective. During our discussion, you offered to issue a written clarification on this point stating the Bureau's position that any safety-based antenna restrictions must be "legitimate" or "valid." Further, we are encouraged by the Bureau's plan to have the Commission act on the petitions for reconsideration by the end of the calendar year or in early 1998.

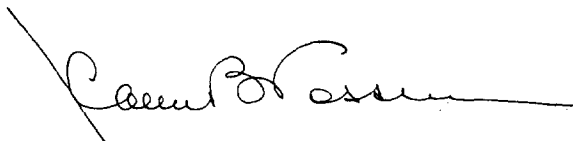
In our *Petition*, BellSouth urged the Commission to modify Section 1.4000 to state that the safety objective be "compelling" rather than "clearly defined." As BellSouth stated:

whether a purported safety objective is clearly defined should not and cannot determine the legitimacy of such an objective. Simply put, a state or local government restriction may be capable of *clearly defining* a safety objective, even though the stated objective may lack merit.

Petition at 14-15 (emphasis in original; footnote omitted). Notwithstanding our recent discussions during which you equated "clearly defined" with the terms "legitimate" or "valid," BellSouth continues to believe that the standard should be "compelling," as demonstrated in its *Petition*, and that the interim clarification would be without prejudice to the disposition of that issue, and others, in the pending *Petition*.

We believe the Bureau's clarification will lead to greater certainty in the video distribution marketplace, thereby facilitating competition to the benefit of all video consumers. Accordingly, BellSouth looks forward to receiving the requested clarification and prompt action on its *Petition* in the above-referenced proceeding.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Robert O. Brown", with a long horizontal flourish extending to the right.

cc: William H. Johnson (by hand)
Eloise Gore (by hand)
Nancy Markowitz (by hand)

CERTIFICATE OF SERVICE

I, Brett Kilbourne of BellSouth Corporation, do hereby certify that the foregoing letter was served on the parties listed below by first class mail, postage prepaid, this 20th day of November, 1997.

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